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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/708,581	11/09/2000	Ronald S. Vladyka JR.	FMC-1006US	2095

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EXAMINER	
WHITE, EVERETT NMN	

ART UNIT	PAPER NUMBER
1623	13

DATE MAILED: 01/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/708,581	VLADYKA ET AL.	
	Examiner	Art Unit	
	EVERETT WHITE	1623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *NONE*.

   Claim(s) objected to: *NONE*.

   Claim(s) rejected: *1-26*.

   Claim(s) withdrawn from consideration: *NONE*.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____

10. ☐ Other: _____

E. White

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Continuation of 5. does NOT place the application in condition for allowance because: Applicants argue against the rejection of Claims 1-13 on the ground that the method of the instant claims sets forth a two step drying process for the removal of the polar organic solvent in the first step and water in a subsequent step, whereby the Asgharnejad et al and Erkoboni et al patents only disclose a one step drying process for the removal of the ethanol/water solvent. Applicants argument is not persuasive since the claimed two step drying process results because of the use of an excess amount of water in the process. Since the amount of ethanol/water solvent used in the Asgharnejad et al patent is equivalent to the amount of ethanol/water used in the instant claims, the drying step disclosed in the Asgharnejad et al patent embraces the drying step of the instantly claimed process. Applicants argument with regard to the differences in particle size of the microcrystalline cellulose of the instant claims at 250 microns and 220 microns in the McTeigue et al patent is not persuasive since the microcrystalline cellulose of the McTeigue et al patent and the instant invention set forth similar utility for the products, their use for preparation of tablets. It is within the skill of the artisan to adjust the size of the micrcrystalline cellulose particles for optimum effectiveness. Applicants argument with regard to no showing of a "loose bulk density" measurement in the McTeigue et al and Kumar patents is not persuasive. Applicants are reminded that the Office is in no position to determine experimentally whether or not, in an invention such as that at issue, the subject matter is the same as that of the reference. Accordingly, in such instances, this shifts the burden to the Applicants who have the resources to make such a determination and is in a better position to determine experimentally the differences between the invention as claimed and that of the art. In re Pye, 355 F2d 641, 148 USPQ 426 (CCPA 1966). Accordingly, the rejection of Claims 1-26 under 35 U.S.C. 103(a) as being unpatentable over the prior art of record is maintained for the reasons of record..

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